

Amendment No. 1 to SB3136

Beavers
Signature of Sponsor

AMEND Senate Bill No. 3136

House Bill No. 3170*

by inserting the following preamble immediately preceding the enacting clause of the printed bill:

WHEREAS, before 1986 tax liabilities were subject to challenge in court only after the taxpayer made payment under protest; and

WHEREAS, through Chapter No. 749 of the 1986 Public Acts, the General Assembly ordained a new, modern, taxpayer-friendly procedure for challenging and determining liability for all taxes collected or administered by the Commissioner of Revenue; and

WHEREAS, in Chapter No. 749, now codified as Tenn. Code Ann. §§ 67-1-1801 to -1807, the General Assembly carefully balanced the rights of taxpayers to full and efficient court determinations of their liabilities for taxes collected or administered by the Commissioner of Revenue with the State's interest in ensuring a stable flow of revenues to fund the services and activities of State government; and

WHEREAS, through the 1986 Act the General Assembly enabled each taxpayer to obtain a court declaration of its tax liability without first paying the disputed tax, and provided for a stay of collection during the pendency of such a court challenge if the taxpayer provides adequate security in the form of a bond, letter of credit, pledge of assets, or liens to ensure that the taxes can be collected if the liability is upheld; and

WHEREAS, the General Assembly in Section 8 of Chapter No. 749 (codified as Tenn. Code Ann. § 67-1-1804) expressly declared that the procedures it set forth in that Chapter are "the sole and exclusive jurisdiction for determining liability for all taxes collected or administered by the Commissioner of Revenue;" and

WHEREAS, this law has been followed and implemented by the courts in cases such as *L.L. Bean, Inc. v. Bracey*, 817 S.W.2d 292 (Tenn. 1991), which held that a

declaratory judgment outside of the procedures set forth in Tenn. Code Ann. §§ 67-1-1801 to -1807 was not available to construe a tax law administered by the Commissioner of Revenue; and

WHEREAS, this 1986 Act is the foundation upon which taxpayers have challenged their liabilities and all Revenue Department tax litigation has been conducted for the past 24 years; and

WHEREAS, the General Assembly believes that this law has functioned well to protect the rights of citizens, businesses, and taxpayers to challenge taxes collected or administered by the Commissioner of Revenue, while also providing security and safeguarding the State's revenues; and

WHEREAS, in *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827 (Tenn. 2008), which was a property tax case not involving the Department of Revenue, the Supreme Court determined that in some circumstances a declaratory judgment could be obtained under Tenn. Code Ann. §§ 29-14-101 et seq. to determine the validity of a tax statute; and

WHEREAS, in *Colonial Pipeline Co. and in Waters v. Farr*, 291 S.W.3d 873 (Tenn. 2009), which case satisfied all the requirements for a proper suit challenging an assessment under Tenn. Code. Ann. § 67-1-1801, the Supreme Court did not fully consider the impact of the exclusivity provisions of Tenn. Code Ann. § 67-1-1804 because that question was not necessary to a decision in either case and therefore was not fully briefed or argued before the Court; and

WHEREAS, the General Assembly wishes to clarify that the procedures set out in Tenn. Code Ann. §§ 67-1-1801 to -1807, which have operated in an effective and balanced manner for the past 24 years, are and remain the only methods for obtaining a court decision concerning tax laws and liabilities administered by the Commissioner of Revenue, and that neither the Declaratory Judgment Act, Tenn. Code Ann. §§ 29-14-101 et seq., nor the declaratory judgment provisions of the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-225, have any application in such matters;

NOW, THEREFORE, the General Assembly acts to clarify and reinforce the procedures for challenges to taxes collected or administered by the Commissioner of Revenue, as follows:

AND FURTHER AMEND by deleting the amendatory language of § 67-1-1807(b) in SECTION 1 of the printed bill, and by substituting instead the following:

(b) No court shall issue any declaratory judgment, restraining order, injunction, stay, supersedeas, prohibition, or other writ or process whatsoever to construe or determine the validity of any tax law, to determine any liability, or to prevent, hinder, or delay the collection of any tax to which this part applies, except that a court in which suit has properly been brought under § 67-1-1801(b) shall take any action necessary to implement the stay of collection provided by §§ 67-1-1801(c), (d), (e), and (f) if, and only if, that court determines that the assessed taxpayer has complied with the requirements stated therein so as to stay collection pending final determination of the suit.

AND FURTHER AMEND by deleting SECTION 2 of the printed bill in its entirety, and by substituting instead the following:

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.